

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSEPH SAMSON RIVERS

Plaintiff,

v.

No. 16-CV-00555 KG/WPL

EMILY YOUNGER

and

**KRQE-TV News 13,
Defendants.**

MOTION TO SET ASIDE ENTRY OF JUDGMENT

COMES NOW, Defendants Emily Younger and KRQE-TV News 13, and hereby submits their Motion to Set Aside Entry of Judgment as follows:

1. Plaintiff filed a Complaint on June 10, 2016, but did not properly serve either Defendant KRQE or Emily Younger.
2. Defendants' counsel filed a Limited Entry of Appearance on October 17, 2016 [Doc.12]
3. On November 8, 2016, the parties reached an agreement that the Defendants would accept service of the Complaint and answer it by November 28, 2016. The arrangement was confirmed with Plaintiff *pro se* in an email dated November 10, 2016. (Exh. A)
4. Defendant filed a Notification with the Court on November 11, 2016 regarding acceptance of service for the Court indicating an answer would be filed by November 28, 2016. [Doc. 14]
5. On November 15, 2016, the Court entered an Entry of Judgment against both Defendants despite the Notification regarding the Defendant's acceptance of service. [Docs. 15 and 16].
6. Based on the agreement in which Defendants were attempting to resolve the issue regarding improper service, Plaintiff should have removed his request for an entry of judgment with the Court. In an abundance of caution, Defendants filed the Notification of Acceptance of service to

alert the Court that the matter of acceptance of service was resolved and to prevent any entry of judgment.

7. Good cause exists to set aside the judgment under Rule 60(b) because rather than engage the parties and the Court in a protracted legal battle about the sufficiency of service, the parties reached an agreement, which was confirmed in writing, by the Defendants on accepting service and answering the complaint which was filed with the Court. Defendant contend the complaint was not properly served upon the Defendants.
8. In addition, Defendants contend the complaint fails to identify a specific defamatory statement and is nothing short of a rambling recitation of allegations based on a seizure of money by the Drug Enforcement Administration and a subsequent forfeiture case brought by the United States Attorney's office for the District of New Mexico.
9. Plaintiff could not be immediately contacted regarding the filing of this Motion despite attempts to do so. Due to the urgency of needing to address the issue, Defendants filed this motion on an emergency basis in an abundance of caution.

Based on the foregoing, Defendants' respectfully request the Court set aside the entry of judgement against Defendants KRQE and Emily Younger.

Respectfully submitted,

ESQUIVEL LAW FIRM, LLC

By /s/ Martin R. Esquivel
MARTIN R. ESQUIVEL
111 Lomas Blvd., NW, Suite 203
Albuquerque, NM 87102
Telephone (505) 933-6880

I hereby certify that a true and accurate copy of the foregoing Motion to Set Aside Entry of Judgment was submitted electronically to the CM/ECF system for electronic delivery, unless otherwise noted, on November 15, 2016.

I also hereby certify that a copy of the Motion to Set Aside Entry of Judgment was sent by U.S. Mail to the following on this 15th day of November, 2016

Joseph S. Rivers
P.O. Box 313
Wayne, MI 48184

/s/ Martin R. Esquivel
MARTIN R. ESQUIVEL

mesquivel@esqlawnm.com

From: mesquivel@esqlawnm.com
Sent: Thursday, November 10, 2016 10:15 AM
To: 'joerivs3@aol.com'
Subject: Confirmation

Dear Mr. Rivers,

I have confirmed with my client that I can accept service for the station and Ms. Younger. I will file a response to your complaint within 20 days from today's date.

Martin R. Esquivel
Esquivel Law Firm, LLC
111 Lomas NW, Suite 203
Albuquerque, NM 87102

Phone (505) 933-6880
Fax (505) 933-6884

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